

REMARKS

This AMENDMENT constitutes the RCE SUBMISSION required by the accompanying RCE.

A 3-month suspension of action on this application has been requested in the RCE.

A Petition for a 3-month extension of time is attached.

The novelty, patentability and importance of the invention is well described in the BACKGROUND AND SUMMARY OF THE INVENTION portions of applicant's specification, and the Examiner's attention is respectfully directed thereto.

Initially, the applicable law regarding 35 USC 102(b) and 103(a) rejections presented in applicant's previous amendment will be set forth herein.

It is well established that "A claim is anticipated under 35 U.S.C. 102 only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. V. Union Oil Co. of California, 814 F2d 628, 631 2 USPQ2d1051, 1053 (Fed. Cir. 1987) (see also MPEP 2131).

Additionally, with regard to inherency, it was held in the recent CAFC decision, Trintec Industries, Inc. v. Top-U.S.A. Corp. (CAFC 7/2/02) that "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." In re Robertson, 169, F. 3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Still further, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijackaert, 9F. 3d, 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir 1993). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic

necessarily flows from the teachings of the applied prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. Ap. & Inter. 1990) (emphasis in original). (Also see MPEP 2112).

It is also well established that, for an obviousness rejection under 35 U.S.C. 103(a), the Examiner has the burden of making a prima facie case of obviousness by the presentation of adequate evidence (e.g. see In re Thrift, 63 USPQ2d2002 (CAFC 9/9/02). As is also well recognized, where a combination of prior art references are combined, the prior art must provide a suggestion or motivation for making such combination without using hindsight provided by applicant's invention. (e.g. see Crown Operations Int'l v. Solutia, 62 USPQ2d1917 (CAFC 5/13/02).

With regard to the evidence required to provide a prima facie showing of obviousness, not In re Lee, 61 USPQ2d1430 (CAFC 1/18/02) which holds that an obviousness determination may not substitute the common knowledge of one skilled in the art for the required specific evidentiary support required for a 35 U.S.C. 103 rejection. (Also see MPEP 2144.03).

It will be understood from the BACKGROUND and SUMMARY OF THE INVENTION that the inclusions of the features represented by the above recitations in a partitioned computer system (particularly the emulation of a network connection) results in the very significant advantage that applications configured to communicate with other applications via a physical network (as is often the case) can be executed on the partitions without modification.

The Reed and Dean references employed by the Examiner in rejecting the previous independent claims 65-75 and 85 (now canceled) under 35 U.S.C. 103(a) have been reviewed and no combination thereof teaches the limitations set forth above in the new independent claims.

It is noted in the Final Action that, in paragraph 20, beginning with the two last lines on page 9, the Examiner admits that "Reed does not explicitly teach processing modules being configured as separate partitions," which is an essential feature of applicant's claimed invention. The Examiner attempts to get around this deficiency in

Reed by stating (beginning at the bottom of page 9 of the Final Action) that “the source user process and the destination user process would inherently be executed on separate partition since one of the processes could be executed on a remote computer.” However, this is not an adequate basis for supporting a rejection in view of In re Rijackaert and Ex parte Levy referenced herein (on pages 15 and 16) with respect to the applicable law regarding rejections. These decisions state that the fact that a certain result or characteristic may occur is not sufficient to establish the inherency of that result or characteristic (In re Rijackaert), and that in relying on the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support that the alleged inherent characteristic necessarily flows from the teaching of the applied prior art (Ex parte Levy).

On page 10 of the Final Action, the Examiner also relies on the teachings of Dean at (Col. 7, Line 45-50) and then goes on to allege that “It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Dean and Reed because the teaching of Dean would improved the system of Reed by restricting memory access by processes (Col. 7, Line 45-50)”. However, it is not seen where this referenced portion teaches separate “partitions” as defined in applicant’s claims. All that Col. 7, Line 45-50 teaches is that “Each process runs in its own virtual address space and memory,” which is not the separate partitions defined in the claims. Thus, the combination of Dean and Reed as teaching applicant’s claimed invention fails, particularly since the Examiner has not provided a reasonable explanation as to why such modification of Reed and Dean would be obvious in the first instance. The Examiner’s allegation that the combination of Dean would improve the system of Reed, even if true, does not amount to obviousness. Furthermore, it is not seen how Reed could be modified to incorporate these teachings of Dean, since they are very different systems.

Still further, it is not seen where either Reed or Dean taken alone or in combination with the other teach the recitations previously set forth herein.

With regard to the mentions by Reed and Dean of a socket connection, there is no teaching that such is an emulated socket connection or that it has the characteristics recited in new claims 101-137, or that it is used in the manner recited in new claims 101-129.

In the "Response to Arguments" beginning at the bottom of page 2 of the Final Action, the examiner responds to two points made by applicant in the previous amendment: (1) that Reed and Dean do not teach network connection and (2) Reed and Dean teaches only a single operating system and does not disclose different partitions/applications operating under the control of separate operating systems.

As to point (1), all of the new claims 100-137 require the establishment of an emulated network connection so as to permit applications which are configured to communicate with one another via a physical network can nevertheless communicate with each other using standard network interfaces even if there is no physical network therebetween. Furthermore, the new claims additionally require that the receiving of a message by the second application from the first application appears to the receiving application as having been sent via an external physical network even though there is no physical network. No combination of Reed or Dean or any of the other cited references provide such teachings.

As to point (2), the issue as to whether Reed and Dean disclose different partitions has already been addressed and it has been shown that such combination of Reed and Dean do not in fact disclose "partitions" as defined in the new claims. The Examiner's allegation that Dean's disclosure of operating processes/programs in a distributed window system or on different computer systems implies that the distributed window system operates the processes programs under the control of different system is inadequate since the Examiner provides no support for this allegation. However, even if true, this would not teach the "portions" defined in the new claims.

In view of all of the foregoing, it is respectfully submitted that the independent claims 101, 112 and 123 are allowable. Accordingly, their dependent claim are also allowable.

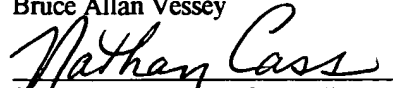
It is therefore respectfully requested that all of the new claims 101-127 be allowed.

Reg. No. 18,931

Tel: (310) 284-9631

Fax: (310) 284-9634

Respectfully Submitted,
Bruce Allan Vessey


Signature of attorney for applicant

NATHAN CASS

Type or print name of attorney